Supreme Court, U.S.
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IN THE SUPREME COURT OF THE
UNITED STATES

October Term, 1979

No. 79-1176

CITY OF MEMPHIS, WYETH
CHANDLER, THE COUNCIL
OF THE CITY OF MEMPHIS
AND EDWIN McBRAYER,

Petitioners

v.

N. T. GREENE AND ELNORA
PRIEST CROSS, EDWIN
OWENS AND CAROLYN BURSE,

Respondents.

On Petition for a Writ of Certiorari to
the United States Court of Appeals For
the Sixth Circuit

BRIEF AMICUS CURIAE

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STATEMENT OF THE CASE

Amicus Curiae accepts for the purpose of this Brief the statement of the case as set forth in the Petition for Certiorari filed by the City of Memphis, et al., and also accepts the City's statement of the questions presented, and the constitutional provisions and statutes involved in the case.

REASONS FOR GRANTING CERTIORARI

Applicants concur in the statement of the City of Memphis in its Reasons for Granting Certiorari, and would supplement the same by the following reasons:

The opinion of the Sixth Circuit in this cause departs from all precedents and for the first time applies the term "badge of slavery" to a racially neutral action of a municipality, taken to accomplish a permissible goal, without any evidence of racial motivation or intent on the part of the City. The term "badge of slavery" is applied to the action of

the municipality in closing one end of a street running through a quiet residential subdivision, solely because the closing was found to affect black non-residents of the neighborhood differently from its effect on white residents of the neighborhood.

The District Court's Opinion (A19-A37)[1] contained no finding of any injury whatsoever to the Plaintiffs or those they represented. The Court of Appeals likewise made no finding of injury, but based its Order in part upon the fact that "there was some evidence, credited by the District Court of an economic depreciation in property values" in a neighboring area which was "predominantly black." (A56). The "evidence" relied upon was the testimony of Plaintiffs' expert witness, who testified affirmatively that there was no lessening of values in such area (A48). There is no basis whatsoever in the Opinion of the District Judge for the statement of

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[1] References are to the Petition for Certiorari filed by the City of Memphis.

the Court of Appeals that he "credited" that witness' testimony that the closing of the street would result in economic depreciation in property values elsewhere.

The decision below is directly contrary to a prior decision of the same Court in the same case on a prior appeal (A11-A18). On the prior appeal, the Court said:

> To establish a Section 1982 or 1983 claim on remand, Greene must prove his allegations that City officials conferred the closed street on West Drive residents because of their color; he must prove racial motivation, intent or purpose, in the absence of such egregious differential treatment as to in itself violate equal protection or, alternatively, to command an inference of racial motivation (A17).

In the Opinion under review, the Court admitted that the ruling of the District Court, upholding the municipal action on the ground

that it was not racially motivated, was supported by its above-quoted direction on previous appeal. Nevertheless, the Court reversed because it found that, despite the absence of racial intent or motive, the City's action was a "badge of slavery" (A53).

The decision below is directly contrary to the following decisions of this Court:

> Personnel Administrator of Massachusetts v. Feeney, ___ U.S. ___ 60 Ed.L.Ed.2d. 870 (1979);
>
> Arlington County Board v. Richards, 434 U.S. 5, 54 L.Ed. 4, 98 S. Ct. 24;
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> Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 255, 50 L.Ed.2d. 97 S. Ct. 555;
>
> Washington v. Davis, 426 U.S. 229, 48 L.Ed.2d. 597, 96 S. Ct. 2040.

In Personnel Administrator of Massachusetts, supra, the Court said:

> But, as was made clear in Washington v. Davis, 426 U.S. 229, 48 L.Ed.2d. 597, 96 S. Ct. 2040 and Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 255, 50 L.Ed.2d. 450, 97 S. Ct. 555, even if a neutral law has a disproportionately adverse effect upon a racial minority, it is unconstitutional under the Equal Protection Clause only if that impact can be traced to a discriminatory purpose.

The Court further stated that:

> 'Discriminatory purpose', however, implies more than intent as volition or intent as awareness of consequences. See United Jewish Organization v. Carey, 430 U.S. 144, 179 51 L.Ed.2d. 229, 97 S. Ct. 966 (concurring opinion). It implies that the decision maker...selected or reaffirmed a particular course of action

at least in part 'because of', not merely, 'in spite of' its adverse effects upon an identifiable group. 60 L.Ed. at 888.

Judge Celebrezze, dissenting from the Opinion below, pointed that in Washington v. Davis, this Court had said:

> A rule that a statute designed to serve neutral ends is nevertheless invalid, absent compelling justification, if in practice it benefits or burdens one race more than another would be far-reaching and would raise serious questions about, and perhaps invalidate, a whole range of tax, welfare, public service, regulatory and licensing statutes that may be more burdensome to the poor and to the average black than to the more affluent white.
>
> Given that rule, such consequences would perhaps be likely to follow. However,

> in our view, extension of the rule beyond those areas where it is already applicable by reason of statutes, such as in the field of public employment, should await legislative prescription. 426 U.S. at 248.

The above cited cases have delineated a reasonable, rational and workable criterion within which municipal authorities can operate without fear that some incidental side effects of their legitimate actions may cause them to be judicially considered as "badges of slavery." The Opinion below will create great confusion in the law.

The effect of the Opinion below is to invalidate as a "badge of slavery" the identical type of governmental actions which this Court has held do not constitute a violation of equal protection of the laws.

The practical effect of the Opinion below is to deny equal protection of the law to the white residents of Hein Park. It is perfectly obvious from the pleadings of the Plaintiffs

and from the Opinion of the Court of Appeals that the only reason why the City's action was challenged, and the only reason why the Court of Appeals struck it down, was because the residents of the area to be benefited were white. If Hein Park had been predominantly black, there would have been no ruling that the City's action violated the Thirteenth Amendment.

The effect of the ruling is that the residents of Hein Park were not entitled to reasonable and necessary protection by their City government, solely because they were members of the white race. Such a ruling stultifies the concept of equal protection of the law.

The decision of the Court of Appeals in this case is contrary to the precedents of this Court and of its own former opinion. It is unfair and unjust to the citizens of Memphis and discriminates invidiously against the residents of Hein Park. It needs and deserves correction by this Court.

WHEREFORE, the Amicus Curiae respectfully submits that the Petition

of the City of Memphis for a Writ of Certiorari should be granted.

Respectfully submitted,

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